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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,545	02/25/2002	Sam L. Samuels	AD6799USNA	7978

23906 7590 03/29/2005

E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER	
AUGHENBAUGH, WALTER	
ART UNIT	PAPER NUMBER

1772

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/084,545	Applicant(s) SAMUELS ET AL.	
	Examiner Walter B Aughenbaugh	Art Unit 1772	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 February 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 1-17 and 32-35.

Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____.

ADVISORY ACTION

Acknowledgement of Applicant's Amendments

1. The After Final Amendment filed February 24, 2005 (Amdt. E) has been received, considered and entered by Examiner.
2. The cancellation of claims 18-31 in Amdt. E has been acknowledged by Examiner.

ANSWER TO APPLICANT'S ARGUMENTS

3. Applicant's arguments regarding the 35 U.S.C. 103 rejection of claims 1-9, 11-14 and 17 over Cook in view of Fowler et al. and in further view of Campbell et al. presented on pages 6-13 of Amdt. E have been fully considered but are not persuasive.

Applicant argues on page 8 of Amdt. E (and on page 11 of Amdt. E) that the proposed replacement of the fabric structure of Cook with that of Fowler et al. is improper because this "would require a substantial reconstruction and redesign of the elements shown in Cook as well as a change in the basic principle under which the Cook construction was designed to operate" (sentence bridging pages 8 and 9 of Amdt. E), but while replacement of the fabric structure of Cook with that of Fowler et al. necessarily results in a change in the fabric structure of Cook, the "basic principle under which the Cook construction was designed to operate" remains unchanged. The "basic principle under which the Cook construction was designed to operate" is the expansion of the fabric in a circumferential direction that does not require a decrease in the length of the balloon (see paragraph 5 of the previous Office Action mailed November 30, 2004). As stated in paragraph 5 of the previous Office Action mailed November 30, 2004, "Fowler et al. teach that when the longitudinal yarn is the non-stretch yarn, the tube expands radially [circumferentially] but expands much less or not at all in the axial (i.e. longitudinal) direction".

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Therefore, as stated in paragraph 10 of the previous Office Action mailed November 30, 2004, “both [Cook and Fowler et al.] teach a cylindrical fabric structure that perform an equivalent mechanical function”, i.e. the tubular fabric structures of neither Cook nor Fowler et al. change substantially in length while being expanded in the radial direction. The “basic principle” under which the Cook and Fowler et al. constructions were designed to operate are therefore the same, and consequently, replacement of the fabric structure of Cook with that of Fowler et al. does not change the “basic principle under which the Cook construction was designed to operate”.

On page 10 of Amdt. E, Applicant takes issue with the statement immediately after the indented text on page 8 of the Office Action mailed April 16, 2004 regarding Applicant’s statement that “Cook requires that the elastomer and hard fibers be parallel to each other”: in the portion of Cook cited on page 8 of the Office Action mailed April 16, 2004 (i.e. col. 3, lines 10-17), Cook plainly establishes that the condition where the two plies are parallel is preferred. A statement that a condition is preferred is not a statement that that condition is required. It is not contended in the Office Action mailed April 16, 2004 or in the previous Office Action mailed November 30, 2004 that Cook teaches that the fabric structure is of interconnected circumferential and longitudinal yarns. The statement immediately after the indented text on page 8 of the Office Action mailed April 16, 2004 was made merely to refute Applicant’s statement that “Cook requires that the elastomer and hard fibers be parallel to each other”.

Applicant’s “presumption” that “Cook clearly rejected the prior art teachings of 2 separate yarns of elastic and inelastic fibers in perpendicular orientation” because “Fowler predates the invention of Cook by several years” made on page 12 of Amdt. E is unfounded (as supported by Applicant’s use of the words “presume” and “presumption”) and irrelevant. At

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issue in the instant application is whether one of ordinary skill in the art would have recognized to have replaced the structure of Cook with the structure of Fowler et al. at the time Applicant's invention was made, not when Cook's invention was made.

Applicant argues that the teachings of Cook "would lead one of skill in the art away from the claimed invention" at the bottom of page 12 of Amdt. E, but one of ordinary skill in the art would have been motivated to have replaced the fabric structure of Cook with that of Fowler et al. because both Cook and Fowler et al. teach a cylindrical fabric structure that perform the equivalent mechanical function of not changing substantially in length while being expanded in the radial direction.

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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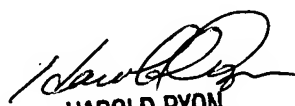
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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

03/22/05

WBA


HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

3/22/05